No. 87-778

In The

Supreme Court of the United States

October Term, 1987

MGA, INCORPORATED,
Petitioner,

v.

GENERAL MOTORS CORPORATION &
LASALLE MACHINE TOOL COMPANY, INCORPORATED,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

– AND APPENDIX –

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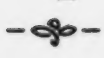
QUESTIONS PRESENTED FOR REVIEW

The questions raised by the Petition either have no foundation in the facts of the case or the decisions below, or would not be dispositive of the case no matter how answered.



RULE 28.1 STATEMENT

In compliance with Rule 28.1, Appendix B to this Brief lists all parent companies, subsidiaries and affiliates of LaSalle Machine Tool Company, Incorporated and General Motors Corporation other than wholly-owned subsidiaries.

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ADDITIONAL RELATED ACTIONS

On November 5, 1986, prior to the filing of the appeal to the Court of Appeals for the Federal Circuit, Petitioner filed a complaint against LaSalle (now L.S.M.T.) alleging: 1) deprivation of property without due process under 42 U.S.C. § 1983, and 2) willful patent infringement (86 CV 74653DT). This action was dismissed by Chief Judge Pratt upon L.S.M.T.'s Motion for Judgment on the Pleadings, and a reprint of the order is appended hereto as Appendix A.

STATEMENT OF CASE

This case is not worthy of this Court's attention. Petitioner has attempted to circumvent well-established appellate procedures and is only now seeking this Court's intervention to save a *collateral* attack in federal courts upon a prior state court decision. If the merits of the underlying issue were indeed worthy of this Court's attention, there was a proper time and procedure for seeking such review, but the Petitioner chose not to avail itself of that opportunity.

Petitioner chose to litigate patent infringement issues in the state courts of Michigan by way of a contract action against Respondent LaSalle. Unsuccessful there, Petitioner chose not to challenge the state court decisions by petitioning this Court for review. Instead, Petitioner carried forward this later-filed infringement action against LaSalle's customer, Respondent General Motors. When LaSalle intervened and pled the prior Michigan adjudication, Petitioner relied on a collateral attack of such adjudication. Chief Judge Pratt properly recognized the preclusive effect of the state court decisions and granted summary judgment. It is the review of that decision by the Federal Circuit Court of Appeals that is at issue here.

Quite simply, the Appellate Court's decision is well-founded and proper. Initially, the Appellate Court dismissed Petitioner's Constitutional arguments as an improper collateral attack upon the state court judgments. The Appellate Court then afforded full faith and credit to the state court decision pursuant to 28 U.S.C. § 1738. In so doing, contrary to the statement of the Petitioner, the Appellate Court did not spring to adopt *Kessler* v. *Eldred*, 206 U.S. 285 (1907), in a judicial vacuum. The Court fully considered the Michigan

cases on prior adjudication to determine the preclusive effect the prior judgment would be given in a Michigan state court.

The Appellate Court decision is not contrary to or inconsistent with any existing law. The only practical effect of this Court's decision to review this case would be to establish a precedent for a circuitous route to this Court and an erosion of a long-standing policy against collateral attacks on previous judgments.

REASONS FOR DENYING THE WRIT

I.

PETITIONER'S CONSTITUTIONAL ARGUMENTS

Little can be added to the Appellate Court's discussion of Petitioner's Constitutional arguments. Any attacks upon the state court decisions, whether characterized as procedurally defective or as "essentially arbitrary," should have been made through appeal to the United States Supreme Court at that time, not by dogged pursuit anew in the federal court. *Southern Pacific Transportation Co.* v. *P.U.C. of California*, 716 F.2d 1285, 1290 (9th Cir. 1983), *cert. denied*, 466 U.S. 936 (1984). To allow Petitioner to collaterally challenge the state court decisions in federal court and then to obtain the review of this Court would in essence create another procedural path to this Court.

II.

PRECLUSIVE EFFECT OF PRIOR JUDGMENT

Petitioner forwards a two-prong attack upon the Appellate Court's use of the prior state court decisions to preclude the federal action for patent infringement.

Petitioner complains first of the *defensive* application of collateral estoppel under Michigan law, and second of an alleged conflict in interpretation of *Kessler* v. *Eldred*, 206 U.S. 285 (1907). Each of these arguments rely upon Petitioner's interpretation of *Wenborne-Karpen Dryer Co.* v. *Dort Motor Car Co.*, 14 F.2d 378 (6th Cir. 1926). To the extent relied upon by Petitioner, the *Wenborne-Karpen* decision has been overruled by this Court's decision of *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313 (1971).

In *Wenborne-Karpen*, the Sixth Circuit Court of Appeals refused to allow the defensive use of collateral estoppel on the basis that the plaintiff had the "right" to "get the judgment of different courts as to the patent." 14 F.2d at 380. Pursuant to the *Blonder-Tongue* decision, the Sixth Circuit has since recognized the defensive use of collateral estoppel in patent cases. *Westwood Chemical, Inc.* v. *Molded Fiber Glass Body Company*, 498 F.2d 1115 (6th Cir. 1974).

The Appellate Court properly determined that Michigan courts would give preclusive effect to the Michigan state court decisions. There have been five determinations that included the issue of whether Petitioner had a fair opportunity to litigate the prior action (the state Court of Appeals, the Michigan Supreme Court, the Federal District Court of Michigan upon Summary Judgment and again upon dismissing a related action on the pleadings, and the Federal Circuit Court of Appeals). There is no error in granting preclusive effect to the state court judgment.

Moreover, there is no conflict in the Federal Circuits regarding the interpretation of *Kessler* v. *Eldred*. Given this Court's guidance announced in *Blonder-Tongue*, the federal circuits have consistently applied the *Kessler*

doctrine to preclude relitigation of patent claims in cases such as this. To the extent the *Wenborne-Karpen* case conflicts with the interpretation, it has been overruled by the *Blonder-Tongue* decision.

CONCLUSION

No question of public importance is involved here other than the availability of this Court as a haven for collateral attacks upon prior judgments. Petitioner failed to avail itself of the proper avenue to this Court and must not now be permitted to clothe itself with allegations of Constitutional issues and inconsistency among federal circuits in order to remedy that failure. The Court of Appeals for the Federal Circuit fully considered and properly applied the law of Michigan. There has been no uncertainty fostered by the Appellate decision; to the contrary, a small measure of judicial certainty has been gained. All that is at stake here is a questionable entitlement to monetary damages that will end with the expiration of the patent at issue

on March 16, 1988. This is certainly not a case worthy of this Court's consideration.

The Petition should be summarily denied.

Respectfully submitted,

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Dated: December 11, 1987

APPENDICES TO BRIEF IN OPPOSITION

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APPENDIX A

MEMORANDUM OPINION AND ORDER

(United States District Court —
Eastern District of Michigan — Southern Division)

(Dated January 16, 1987)

(MGA, INC., Plaintiff, v. L.S.M.T. Corp. and Acme-Cleveland Corp., Defendants — CIVIL ACTION NO. 86-74653; HON. PHILIP PRATT, CHIEF JUDGE)

This case has its origins in charges by MGA that L.S.M.T. infringed on certain of its patents. In the mid-1970's, the defendant, then under the name of LaSalle Machine Tool, Inc., began supplying customers with machinery alleged to infringe upon MGA's patent number 3,570,656 ('656). The patent covers machinery used in the mass production of automobiles. In 1979, MGA and LaSalle entered into a licensing agreement giving LaSalle the right to manufacture and market the patented machinery, and granting a retroactive license as to machinery sold prior to January 1, 1979. On April 4, 1981, MGA sued LaSalle in state court for breach of the licensing agreement. The court ruled in LaSalle's favor on July 12, 1984, holding that the disputed machinery did not infringe on the '656 patent and hence was not covered by the license. The Michigan Court of Appeals affirmed, 148 Mich. App. 350 (1986), and the Michigan Supreme Court recently denied MGA's petition for leave to appeal. 426 Mich. 870 (1986).

While the state action was pending, MGA sued LaSalle's primary customer, General Motors Corporation, in this court for infringement of the same patent. On January 28, 1985, LaSalle intervened in that case, and all claims against General Motors were voluntarily dismissed except those arising out of the machinery sold to it by LaSalle. On September 8, 1986, this court granted LaSalle's motion for summary judgment, holding that the machinery was either covered by the patent, hence protected by the licensing agreement, or if it was not protected by the agreement, it could not be violating MGA's patent. *MGA* v. *General Motors Corp.*, Slip Op. 83-2642 (E.D. Mich Sept. 8, 1986). MGA is appealing this decision to the Federal Circuit Court of Appeals.

MGA has now sued LaSalle again, the latter having changed its name to L.S.M.T. Count One alleges that MGA's due process rights guaranteed by the Fourteenth Amendment were violated by the state courts' arbitrary and capricious decisions in favor of LaSalle. Count Two alleges that L.S.M.T. willfully infringed on the '656 patent by violating the 1979 licensing agreement.[1] L.S.M.T. moves to dismiss on the pleadings pursuant to F.R.Civ.P. 12(c). In considering a rule 12(c) motion, the court must accept as true all of the well-pleaded facts alleged in the complaint, and the complaint can be dismissed only "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon* v. *King & Spalding*, 467 U.S. 69, 73 (1983); *Bloor* v. *Carro, Londin, Rodmann & Fass*, 754 F.2d 57, 61 (2d Cir. 1985).

To state a claim under 42 U.S.C. § 1983, there must be an allegation that the defendant acted under color of

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[1] The court is working from the plaintiff's second amended complaint, which MGA moved for leave to file as part of its response to L.S.M.T.'s motion to dismiss.

state law. *Adickes* v. *S. H. Kress & Co.*, 398 U.S. 144 (1970). A private party comes within the purview of Section 1983 only "when he is a willful participant in the joint action with the State or its agents . . . ." *Dennis* v. *Sparks*, 449 U.S. 24, 28 (1980). The conduct of the private actor must be fairly attributable to the state. *Lugar* v. *Edmonson Oil Company*, 457 U.S. 922 (1981). The Supreme Court has said that "merely being on the winning side does not make the party a co-conspirator or a joint actor with the [state]." *Sparks*, 449 U.S. at 28. Neither does the invocation of state legal proceedings by a private party satisfy the state action requirement. *Lugar*, 457 U.S. at 939 n. 21. Conclusory allegations of conspiracy or concerted action will not suffice to withstand a motion to dismiss. *Steele* v. *Stefan*, 633 F.Supp. 950, 952 (D. Kan. 1986).

The plaintiff has not made a single factual allegation to substantiate its claim that L.S.M.T. acted in concert with state authorities to deprive MGA of its constitutional rights. It simply asserts in a conclusory fashion that the defendant acted "jointly with and under the authority of the Courts of the State of Michigan." Second Amended Complaint, ¶ 19. Count one is dismissed.

L.S.M.T. argues that Count Two, the claim for patent infringement, is barred by the doctrine of *res judicata*. MGA alleges that L.S.M.T. infringed its patent by violating the licensing agreement, the identical issue which was decided in L.S.M.T.'s favor in state court and affirmed by the state appellate courts. 28 U.S.C. § 1738 provides that federal courts must give the same preclusive effect to state court judgments as the judgments would receive in the courts of the rendering state. *Marrese* v. *Academy of Orthopedic Surgeons*, 470 U.S. 373 (1985); *Migra* v. *Warren City School Dist. Bd.*

of Education, 465 U.S. 75 (1984). If, under Michigan law, MGA is precluded from relitigating its claims in state court, it cannot pursue them in federal court unless the prior state proceeding did not provide MGA with a full and fair opportunity to present its claim. *Kremer* v. *Chemical Constr. Corp.*, 456 U.S. 461 (1981). The only impact of federal law on this determination is in the inquiry as to whether the state proceedings satisfied the minimal requirements of the Due Process Clause of the Fourteenth Amendment. *Kremer*, 456 U.S. at 481; *Leal* v. *Krasewski*, 803 F.2d 332, 334 (7th Cir. 1986).

Barring constitutional defects, this case could not be relitigated in the courts of Michigan. Collateral estoppel bars the relitigation of issues previously decided in a prior action when the parties to the second action are the same. *Howell* v. *Vito's Trucking Co.*, 386 Mich. 37 (1971); *Stolaruck* v. *Dept. of Transportation*, 114 Mich. App. 357 (1982). The parties in this action are the same as those in the prior state action and the same issue is in dispute: did L.S.M.T./LaSalle violate the licensing agreement. MGA attempts to avoid the preclusive effect of the prior state judgment by alleging that it was constitutionally infirm. MGA claims that the state court proceedings violated its due process rights in the following ways:

— the trial court's decision was arbitrary as it was not based upon the application of any legal principles;

— the decision of the Michigan Court of Appeals was arbitrary in that it was an unreasonable interpretation of the trial court's decision;

— the Court of Appeals based its decision on evidence not actually before it and not reviewed by either the panel or the judge's staff;

— the appellate decision was actually made by staff attorneys, rather than by the assigned judges.

The first two allegations are conclusions of law rather than factual pleadings. This court must only accept *well pleaded facts* as true, and mere conclusory allegations are insufficient to support a Section 1983 claim. *Chapman* v. *City of Detroit*, Slip Op. 85-1634 (6th Cir. December 30, 1986). Even so, these conclusory pleadings do not call into question the preclusive effect of the state judgment. Federal courts have no appellate jurisdiction to review decisions of state courts, even if those decisions are incorrect on the law. *Towers, Perrin, Forster & Crosby, Inc.* v. *Brown*, 732 F.2d 345, 351 (3rd Cir. 1984). The purpose of Section 1738 is to promote comity between state and federal courts, and to eliminate the uncertainty, confusion and delay that accompany the relitigation of cases. *Kremer*, 456 U.S. at 466 n. 6; *Brown* v. *St. Louis Police Dept., Etc.*, 691 F.2d 343, 395 (8th Cir. 1982), *cert. denied* 461 U.S. 908. To allow every party who loses in state court to relitigate his claim in federal court on the ground that the state court made legal mistakes would be to transform federal district courts into state courts of appeal, eviscerate Section 1738 and the underlying policy of comity, and as a practical matter clog the federal system.

The remaining allegations as to the unfairness of the state proceedings, even if true, do not render the state judgment constitutionally infirm. So long as MGA had an adequate opportunity to litigate disputed issues of fact and to present its evidence, its Fourteenth Amendment Due Process rights were not violated. *Kremer*, 456 U.S. at 483-85. A Supreme Court decision interpreting the Full Faith and Credit Clause of the Constitu-

tion, Art. IV, § 1, suggested what a fair and full opportunity to litigate entails:

> At the outset, it should be observed that the proceedings in the Florida court prior to the entry of the decree of divorce were in no way inconsistent with the requirements of procedural due process. We do not understand respondent to urge the contrary. The respondent personally appeared in the Florida proceedings. Through his attorney he filed pleadings denying the substantial allegations of petitioner's complaint. It is not suggested that his rights to introduce evidence and otherwise to conduct his defense were in any degree impaired; nor is it suggested that there was not available to him the right to seek review of the decree by appeal to the Florida Supreme Court. It is clear that respondent was afforded his day in court with respect to every issue involved in the litigation, including the jurisdictional issue of petitioner's domicile. Under such circumstances, there is nothing in the concept of due process which demands that a defendant be afforded a second opporunity to litigate the existence of jurisdictional facts.

Sherrer v. *Sherrer*, 334 U.S. 343, 349 (1947). Applying the factors mentioned in *Sherrer* to this case, it is undisputed that MGA instigated and received a trial on the merits at which testimony was given by both sides, and that the judgment which resulted was reviewed by two appellate courts. There is not a single allegation in MGA's complaint which permits even the inference that it was denied its due process rights in the state

court proceedings. Count Two of the second amended complaint is dismissed.[2]

The defendants have also moved for attorney fees.[3] F.R.Civ.P. 11 requires attorneys to conduct a reasonable pre-filing inquiry to ensure that every paper they file has a reasonable basis in fact and law. This is an objective standard, rendering subjective beliefs irrelevant. *See*, Schwarzer, *Sanctions Under the New Federal Rule 11 — A Closer Look*, 104 F.R.D. 181 (1985). While it is clear that sanctions should not be lightly imposed, an attorney may not evade his duty to make a reasonable inquiry before signing his name to a pleading by claiming that the duty to represent one's client zealously takes priority. *Mohammed* v. *Union Carbide Corp.*, 606 F.Supp. 252 (E.D. Mich. 1985). Though mere lack of success does not justify the imposition of sanctions, this court will not hesitate in awarding attorney fees when faced with a frivolous complaint. *Advo Systems, Inc.* v. *Walters*, 110 F.R.D. 426 (E.D. Mich. 1986).

This lawsuit was clearly filed in violation of Rule 11. MGA did not offer a single fact to support its claim in Count One that L.S.M.T. acted to deprive MGA of its constitutional rights. The court finds it incredible that MGA claims that the defendant in the action brought by MGA somehow violates MGA's constitutional rights merely by successfully defending itself against MGA's suit! Turning to Count Two, it seems that MGA's basic claim is that the state court judgment should not be given preclusive effect because it was unfair for

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[2] Counts one and two are also dismissed as to Acme-Cleveland Corporation, the parent corporation of L.S.M.T. In so doing, the court also sets aside the default entered against Cleveland on December 31, 1986.

[3] Defendants have moved for fees pursuant to 42 U.S.C. § 1988 (civil rights), 35 U.S.C. § 285 (patents) and F.R.Civ.P. 11. The court will only consider the request under Rule 11.

MGA to lose. There is nothing in either the complaint or in the relevant caselaw that offers a shred of support to MGA's constitutional claims. In sum, MGA's second amended complaint is bereft of any evidence that it was preceded by a reasonable inquiry into either the facts or the caselaw. The court has reviewed the affidavits submitted by defense counsel, and finds an award of $3,500.00 in attorney fees to be reasonable. MGA and its counsel shall be jointly and severally liable for this amount.

L.S.M.T.'s motions to dismiss and for Rule 11 sanctions are granted. The plaintiff's second amended complaint is dismissed, and L.S.M.T. is awarded $3,500.00 attorneys' fees, to be paid within thirty days after this order is issued.

IT IS SO ORDERED.

/s/ PHILIP PRATT, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: January 16, 1987

APPENDIX B

LISTING OF ALL PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES OF GENERAL MOTORS CORPORATION AND LaSALLE MACHINE TOOL COMPANY, INCORPORATED

Pursuant to Supreme Court Rule 28.1 the following information is provided by General Motors Corporation.

General Motors Corporation is not a subsidiary of a publicly-owned corporation. All subsidiaries and affiliates of General Motors Corporation are wholly-owned except:

- Alambrados Automatrices, S.A. de C.V. *(Mexico)*
- Alambrados y Circuitos Electricos, S.A. de C.V. *(Mexico)*
- AMBRAKE Corporation *(USA)*
- Aralmex, S.A de C.V. *(Mexico)*
- Autos y Maquinas del Ecuador S.A. *(AYMESA) (Ecuador)*
- Cableados de Juarez, S.A. de C.V. *(Mexico)*
- CABLESA-Industria de Componentes Electricos Limitada *(Portugal)*
- Calsonic Harrison Co., Ltd. *(Japan)*
- Compania Nacional de Direcciones Automotrices, S.A. de C.V. *(Mexico)*
- Componantes Delfa, C.A. *(Venezuela)*
- Componentes Mecanicos de Matamoros, S.A. de C.V. *(Mexico)*
- Conductores y Componentes Electricos, de Juarez, S.A. de C.V. *(Mexico)*
- Convesco Vehicle Sales GmbH *(West Germany)*
- Daewoo Automotive Components, Ltd. *(Korea)*
- Daewoo Motor Co., Ltd. *(Korea)*

- Delco Electronics Corporation *(USA)*
- Delkor Battery Company, Ltd. *(Korea)*
- Delmex de Juarez, S.A. de C.V. *(Mexico)*
- Delrado, S.A. de C.V. *(Mexico)*
- Detroit Deere Corporation *(USA)*
- DHB – Componentes Automotivos S.A. *(Brazil)*
- DHMS Industries, Ltd. *(Korea)*
- DR DE CHIHUAHUA, S.A. de C.V. *(Mexico)*
- Fabrica Columbiana de Automotores S.A. ("Colomotores") *(Columbia)*
- General Motors de Colombia S.A. *(Columbia)*
- General Motors del Ecuador S.A. *(Ecuador)*
- General Motors Egypt, S.A.E. *(Egypt)*
- General Motors España, S.A. *(Spain)*
- General Motors *(Europe)* AG *(Switzerland)*
- General Motors France *(France)*
- General Motors Hellas, A.B.E.E. *(Greece)*
- General Motors Iran Limited *(Iran)*
- General Motors Kenya Limited *(Kenya)*
- General Motors Korea Co., Ltd. *(Korea)*
- General Motors del Peru S.A. *(Peru)*
- General Motors de Portugal, Limitada *(Portugal)*
- General Motors Terex do Brasil Ltda. *(Brazil)*
- GM Allison Japan Limited *(Japan)*
- GM Locomotivas Ltda. *(Brazil)*
- GMFanuc Robotics Corporation *(USA)*
- Hua Tung Automotive Corporation *(Rep. of China)*
- Ilmore Engineering, Ltd. *(England)*
- Industries Macaniques Maghrebines, S.A. *(Tunisia)*
- Industrija Delova Automobila, Kikinda *(Yugoslavia)*

- INLAN-Industria de Componentes Mecanicos, Lda. *(Portugal)*
- Isuzu Motors Limited *(Japan)*
  Isuza Motors Overseas Distribution Corp. *(Japan)*
- Kabelwerke Reinshagen GmbH *(West Germany)*
- Kabelwerke Reinshagen Werk Berlin GmbH *(West Germany)*
- Kabelwerke Reinshagen Werk Neumarkt GmbH *(West Germany)*
- Koram Plastics Company, Ltd. *(Korea)*
- Metal Casting Technology, Inc. *(USA)*
- Motor Enterprises, Inc. *(USA)*
- New United Motor Manufacturing, Inc. *(USA)*
- NHK Inland Corporation *(Japan)*
- Omnibus BB Transportes, S.A. *(Ecuador)*
- Promotora de Partes Electronicos Automotrices *(Mexico)*
- P.T. Mesin Isuzu Indonesia *(Indonesia)*
- Rimir, S.A. de C.V. *(Mexico)*
- Rio Bravo Electricos, S.A. de C.V. *(Mexico)*
- Senalizaçion y Accesorios del Automovil Yorka, S.A. *(Spain)*
- Shinsung Packard Company, Ltd. *(S. Korea)*
- Sistemas Electricos y Conmutadores, S.A. de C.V. *(Mexico)*
- Sung San Company, Ltd. *(S. Korea)*
- Suzuki Motors Co., Ltd. *(Japan)*
- TEREX Equipment Limited *(Scotland)*
- Vauxhall Motors Limited *(England)*

- Vestiduras Fronterizas, S.A. de C.V. *(Mexico)*
- Volvo GM Heavy Truck Corporation *(USA)*

Also pursuant to Supreme Court Rule 28.1, the parent corporation of LaSalle Machine Tool Company, Inc. is Acme-Cleveland Corporation, 30195 Chagrin Boulevard, Suite 300, Cleveland, Ohio 44124.